Supreme Court, U.S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1979

CASE NO. 79-1260

NOEL CHANDLER AND ROBERT GRANGER,

Petitioners,

vs.

THE STATE OF FLORIDA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

RESPONDENT'S MOTION TO DISMISS OR AFFIRM

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Attorneys for Petitioner

COMES NOW, the Respondent, THE STATE OF FLORIDA, by and through its undersigned counsel, pursuant to Sup.Ct. R.16 (28 U.S.C.), and moves this Honorable Court to dismiss the Petition for a Writ of Certiorari, and as grounds therefore shows:

1. That the Respondent is in receipt of the Petitioner's Petition for a Writ of Certiorari, which is improperly designated, "Jurisdictional Statement." The Petitioners now make a bare allegation that Canon 3(A)(7) of the Code of Judicial Conduct promulgated by the Florida Supreme Court, has denied them a fair and impartial trial and due process of law.

2. That said Petition is predicated upon the unreported decision which is appended hereto, of the Supreme Court of Florida, in Chandler v. State, S.Ct.

Case No.s 56,040, 56,194 and 56,236, opinion filed September 27, 1979, and the Florida District Court of Appeal, Third District, opinion in Chandler v. State, 366 So.2d 64 (Fla. 3d DCA 1979). The remaining decision cited by the Petitioners at State v. Granger, 352 So.2d 175 (Fla. 1977), is a table citation.

3. That the Supreme Court of Florida's opinion herein states simply that the court is without jurisdiction, to wit:

> "PER CURIAM
>
> This cause reaches us by way of petitioners' assertion of appellate jurisdiction and petition for writ of certiorari from a decision of the District Court of Appeal, Third District, reported at 366 So.2d 64. We have no appellate jurisdiction, as the district court expressly declined to rule upon

the constitutional issue. Chandler v. State, 366 So.2d 64, 69 (Fla. 3d DCA 1978).

Nor do we have certiorari jurisdiction. No conflict has been demonstrated, and the question of great public interest certified to us by the district court has been rendered moot by the decision in Petition of Post-Newsweek stations, Florida, Inc., [370 So.2d 764 (Fla. 1979)]. Accordingly, the petition for writ of certiorari is denied."

The Respondent concedes that the Supreme Court of Florida has determined that cameras in the courtroom are not unconstitutional per se. See, Estes v. Texas, 381 U.S. 532 (1965). The District Court's opinion had certified the question of the constitutionality of Florida Judicial Canon 3(A)(7), thus:

> "In determining that a one year trial program should be instituted, the Florida Supreme Court has

> determined that camera coverage of a trial does not, in and of itself, violate the federal and state constitutions. Petition of Post-Newsweek Stations, Florida Inc., 377 So.2d 1 (Fla.1976), 337 So.2d 804 (Fla.1976), 347 So.2d 402 (Fla.1977), 347 So.2d 404 (Fla.1977). We, therefore, decline to discuss further the constitutionality per se of the canon, although we will, in view of the importance of the question involved, certify the decision to the Supreme Court of Florida as a question of great public interest."
>
> 366 So.2d at 69.

However, relevant to this Court's jurisdiction, the Florida District Court also held that:

> "We pass on to that portion of the defendant's point which urges that matters occurring in their trial pursuant to the experimental cannon

deprived them of their right to a fair trial and was violative of due process of law. The defendants urge error with regard to two rulings allowing television cameras in the courtroom during their trial; error is urged (1) in declining to preclude television cameras from their trial and (2) in declining to sequester the jury. However, the defendants have not met their burden of showing from this record that either of these circumstances operated to deprive them of a fair trial.

"We have examined the record in the light of the defendants' contentions under this point and find no reason on this record to hold that the admission of television cameras into this particular trial caused the defendants any difficulty in the preparation or presentation of their case or deprived them of a impartial jury. Accordingly, we hold that no error is shown by the defendants' first point." [Emphasis added].

366 So.2d at 69.

The decision of the Florida Supreme Court and the Florida District Court of Appeal fail to manifest the requisite grounds to invoke this Court's jurisdiction.

4. That it is patently obvious upon the relevant portion of the District Court's opinion above that, 1) there is no federal question properly preserved for review in the Petitioners' trial regarding Florida Judicial Canon 3(A)(7) and 2) that where the issue on the face of the record was not properly preserved, then the Supreme Court of Florida's finding merely that it is without jurisdiction, based upon the Florida Rules of Appellate Procedure, does not present a substantial federal question. See, Fla.R.App.P. 9.030(a). Moreover, while certifying the question regarding Petition

of Post-Nesweek, the Florida District Court affirmed the Petitioners' convictions upon separate state grounds, not questioned in the instant petition.

5. That Sup.Ct. Rule 16 (28 U.S.C.) at 1(b) and (c), provides specifically that:

> "(b) The court will receive a motion to dismiss an appeal from a state court on the ground that it does not present a substantial federal question; or that the federal question sought to be reviewed was not timely or properly raised, or expressly passed on; or that the judgment rests on an adequate non-federal basis.
>
> "(c) The court will receive a motion to affirm the judgment sought to be reviewed on appeal from a federal court on the ground that it is manifest that the questions on which the decision of the cause depends are so un-

> substantial as not to need further argument."

It is wholly apparent, upon the face of the record, that the convictions herein rest upon non-federal grounds; that the Petitioners have failed to properly preserve the federal question of which they complain and that the question of state law regarding the Florida Supreme Court's certiorari jurisdiction, which was passed upon by the Florida Supreme Court in the decision that the Petitioners seek to have reviewed, is manifestly not a substantial federal question. The cause herein should therefore be dismissed and/or the judgment below should be affirmed, inasmuch as the question presented by the Petitioners is "so unsubstantial as to not need further argument." Durley v. Mayo,

351 U.S. 2, 76 S.Ct. 806, 100 L.Ed. 1178 (1956); Rice v. Sioux City Cemetery, 349 U.S. 70, 74, 75 S.Ct. 614, 99 L.Ed. 897 (1955); Lynch v. New York, 293 U.S. 52, 55 S.Ct. 16, 79 L.Ed. 191 (1934).

WHEREFORE, upon the foregoing, the Respondent, THE STATE OF FLORIDA, prays that this Honorable Court will enter its order dismissing the judgment below.

RESPECTFULLY SUBMITTED, on this ____ day of March, 1980, at Miami, Dade County, Florida.

JIM SMITH
Attorney General

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Phone: (305) 377-5441

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three (3) true and correct copies of the foregoing Motion to Dismiss or Affirm were caused to be served by United States mail first-class delivery on the ___ day of March, 1980, upon Joel Hirschhorn, Attorney for the Petitioner, 742 N.W. 12th Avenue, Miami, Florida, 33136 and upon Talbort D'Alemberte, Steel, Hector and Davis, Attorneys for Amicus Curiae, 1400 Southeast First National Bank Building, Miami, Florida, 33131.

CALVIN L. FOX, Esquire
Assistant Attorney General

RESPONDENT'S EXHIBITS

Supreme Court of Florida

RECEIVED
ATTORNEY GENERAL
MIAMI OFFICE
DOCKETED

Nos. 56,040
56,194
56,236

NOEL CHANDLER, et al., Petitioners/Appellants,

v.

STATE OF FLORIDA, Respondent/Appellee.

[September 27, 1979]

PER CURIAM

This cause reaches us by way of petitioners' assertion of appellate jurisdiction and petition for writ of certiorari from a decision of the District Court of Appeal, Third District, reported at 366 So.2d 64. We have no appellate jurisdiction, as the district court expressly declined to rule upon the constitutional issue. Chandler v. State, 366 So.2d 64, 69 (Fla. 3d DCA 1978).

Nor do we have certiorari jurisdiction. No conflict has been demonstrated, and the question of great public interest certified to us by the district court has been rendered moot by the decision in Petition of Post-Newsweek Stations, Florida, Inc., No. 46,835 (Fla. Apr. 12, 1979).

Accordingly, the petition for writ of certiorari is denied.

It is so ordered.

ENGLAND, C.J., ADKINS, BOYD, OVERTON, SUNDBERG and ALDERMAN, JJ., Concur

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

Writs of Certiorari and An Appeal from the District Court of Appeal,

Third District - Case No. 77-2624

Joel Hirschhorn of Hirschhorn and Freeman; and Richard M. Gale, Miami, Florida,

for Petitioners/Appellants

Jim Smith, Attorney General; and Calvin L. Fox, Assistant Attorney General, Miami, Florida,

for Respondent/Appellee